

Summary of State Probate Attorney Fee Requirements as of 6/9/2010

Fixed Fee Schedules/Requirements	Reasonableness/Judicial Discretion
California, Iowa, Nevada, Wyoming.	Alabama*, Alaska*, Arizona, Arkansas, Colorado, Connecticut*, Delaware, District of Columbia, Florida*, Georgia, Hawaii*, Idaho*, Illinois, Indiana, Kansas, Kentucky*, Louisiana*, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire*, New Jersey*, New Mexico, New York, North Carolina*, North Dakota, Ohio, Oklahoma*, Oregon, Pennsylvania*, Rhode Island, South Carolina*, South Dakota, Tennessee, Texas, Utah, Vermont*, Virginia*, Washington, West Virginia*, Wisconsin.

Twenty-nine states and the District of Columbia have some form of reasonableness or judicial discretion standard within their probate codes. Seventeen states have no statute within their probate code referencing attorney fees but would be held to a reasonableness standard by their state's Rules of Professional Conduct.* The final four states use a statutorily mandated fixed fee schedule to determine fees based on a percentage of the estate's value.

* States with no statute on point. Attorney's fees would therefore be determined by the rules of profession conduct which require a reasonableness standard. *See* Rules of Professional Conduct Rule 1.5(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.

Index of State Probate Attorney Fee Requirements¹

State	Adopted UPC?	Statutory Method	Probate Statute ²	Guidelines Available
Alabama		No specific section dealing with attorney's fees.	<i>See</i> Ala.Code 1975 § 43-8-1	
Alaska	Yes	No specific section dealing with attorney's fees.	<i>See</i> AS § 13.16.005	
Arizona	Yes	Reasonable.	ARS § 14-11004	http://www.superiorcourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/docs/ao1996-017.pdf
Arkansas		Reasonable.	A.C.A. § 28-48-109	
California		Fee Schedule.	West's Ann. Cal. Prob. Code §§ 10810 – 10814	
Colorado	Yes	Reasonable.	C.R.P.P. Rule 33.1	

¹ See Comparison Chart of all 50 States: <http://www.efmoody.com/estate/probate.html>

² See listing and links to all 50 States' statutory provisions: <http://estate.findlaw.com/probate/probate-court-laws/estate-planning-law-state-probate.html>.

Connecticut		No specific section dealing with attorney's fees.		
Delaware		Reasonable.	12 Del.C. § 2305	
District of Columbia		Reasonable.	DC ST § 20-753	
Florida	Yes	No specific section dealing with attorney's fees.		
Georgia		Reasonable.	Ga. Code Ann., § 53-5-26	
Hawaii	Yes	No specific section dealing with attorney's fees.	HRS § 607-18 may be applicable re: reasonableness.	
Idaho	Yes	No specific section dealing with attorney's fees.		
Illinois		Reasonable.	Ill. Stat. § 5/27-2	

Indiana		Just and reasonable.	IC 29-1-10-13	http://www.co.hamilton.in.us/library/courts/pdf/PR7-Form.pdf
Iowa		Reasonable. With fee schedule as maximum allowance. Extraordinary circumstances can justify further fees that are just and reasonable.	I.C.A. § 633.199	
Kansas		Just and reasonable.	K.S.A. 59-1717	
Kentucky		No specific section dealing with attorney's fees.		
Louisiana		No specific section dealing with attorney's fees.		
Maine	Yes	Reasonable.	18-A M.R.S.A. § 3-721	

Maryland		Reasonable.	MD Code, Estates and Trusts, § 7-602	
Massachusetts	Yes	Fair and equitable.	M.G.L.A. 215 § 39A	
Michigan	Yes	Reasonable.	M.C.L.A. 700.3720	
Minnesota	Yes	Just and reasonable compensation; 5 factors for consideration when there is no prior agreement; Value of the estate is not a controlling factor.	Minn. Stat. § 525.515	
Mississippi		Reasonable.	Miss. Code Ann. § 91-7-281	
Missouri		Just and reasonable.	Mo. Stat. § 475.265	
Montana	Yes	Judicial discretion.	MCA 72-3-633, MCA 25-10-301,	
Nebraska	Yes	Reasonable.	Neb. Stat. §30-2481	

Nevada		Fee Schedule.	Nev. Rev. Stat. §§ 150.060-150.067	http://www.clarkcountycourts.us/ejdc/courts-and-judges/probate/Probate_Forms/Probate_Law.pdf
New Hampshire		No specific section dealing with attorney's fees.		
New Jersey	Yes	No specific section dealing with attorney's fees. See listed statute for mention of "Just counsel fee."	N.J.S.A. 3B:18-6	
New Mexico	Yes	Reasonable.	N. M. S. A. 1978, § 45-3-720	
New York		Reasonable.	McKinney's SCPA § 2302	
North Carolina		No specific section dealing with attorney's fees.	N.C.G.S.A. §§ 28A-23-4, 6-21.5 may be useful re:	

			reasonableness	
North Dakota	Yes	Reasonable.	NDCC, 30.1-18-20	
Ohio		Reasonable.	R.C. § 2113.36	
Oklahoma		No specific section dealing with attorney's fees.		
Oregon		Reasonable.	O.R.S. § 116.183	
Pennsylvania	Yes	No specific section dealing with attorney's fees.		http://evans-legal.com/dan/estfees.html (fair and reasonable as determined by court).
Rhode Island		Just and reasonable.	Gen.Laws 1956, § 33-14-7	
South Carolina	Yes	No specific section dealing with attorney's fees.		
South Dakota	Yes	Reasonable.	SDCL § 29A-3-720	
Tennessee		Judicial Discretion.	T. C. A. § 30-	

			2-614	
Texas		Reasonable.	Tex. Stat. § 666	
Utah	Yes	Reasonable.	U.C.A. 1953 § 75-3-718	
Vermont		No specific section dealing with attorney's fees.		
Virginia		No specific section dealing with attorney's fees.		
Washington		Reasonable.	West's RCWA 11.96A.150	
West Virginia		No specific section dealing with attorney's fees.		
Wisconsin	Yes	Just and reasonable.	W.S.A. 857.05, W.S.A. 851.40	
Wyoming		Fee Schedule.	W.S.1977 § 2- 7-804	